UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/747,652	12/30/2003	Patrick D. Blattner	06975-467001/AOL 213	1574

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EXAMINER
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ART UNIT	PAPER NUMBER
2174	

MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/747,652	Applicant(s) BLATTNER ET AL.
	Examiner Thanh T. Vu	Art Unit 2174

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>06 November 2007</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

  a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

  b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

     Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

  (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

  (b)☐ They raise the issue of new matter (see NOTE below);

  (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

  (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

     NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

  The status of the claim(s) is (or will be) as follows:

  Claim(s) allowed: _____.

  Claim(s) objected to: _____.

  Claim(s) rejected: _____.

  Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Sy D Luu/
Primary Examiner, Art Unit 2174

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's primary argument is that "Tang fails to disclose or suggest communicating that task proximity information using a change in avatar appearance or animation, where the avatar is capable of being animated" (page 5 of Remarks).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); In re Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In this case, Liles teaches an avatar is capable of being animated (col. 3, lines 52-67; and col. 9, lines 43-52 shows an avatar being animated base on different gestures selected by the user). Tang teaches communicating, based on stored data association, the out-of-band information to the second user using a change in the avatar appearance or avatar animation as a communication conduit (col. 5, lines 1-1 O; col. 7, lines 56-65; col. 9, lines 58-65; shows changing appearance of a user's image). Accordingly, the combination Liles and Tang teaches the claim language as required by claim 1.

The applicant also points out that "Tang, like Lies, fails to discloses or suggest receiving, independently of the first user and the message, an out-of-band information, information indicating a personality characteristic associated with the first user". The examiner does not agree because Tang teaches receiving, independently of the first user and the message (col. 5, lines 1-10; col. 13, lines 57-63 and col. 15, lines 6-15; col. 18, lines 55-67; shows receiving out-of-band information related to context of the first user) and Liles teaches information indicating a personality characteristic associated with the first user (col. 6, lines 50-67; character setting of an avatar.)

The applicant also points out that "Tang, like Lies, fails to discloses or suggest receiving, independently of the first user and the message, and out of band information, information indicating an emotional state associated with the first user." The examiner does not agree because Tang teaches receiving, independently of the first user and the message, an out-of-band information (col. 5, lines 1-10; col. 13, lines 57-63 and col. 15, lines 6-15; col. 18, lines 55-67; shows receiving out-of-band information related to context of the first user) and Liles teaches information indicating a emotional state associated with the first user (col. 3, lines 32-34 shows gestures that are indicative of personality trait and/or an emotion)

The applicant also points out that "Tang, like Lies, fails to discloses or suggest receiving, independently of the first user and the message, and out of band information, information related to a mood of the first user." The examiner does not agree because Tang teaches receiving, independently of the first user and the message, out-of-band information (col. 5, lines 1-10; col. 13, lines 57-63 and col. 15, lines 6-15; col. 18, lines 55-67; shows receiving out-of-band information related to context of the first user) and Liles teaches information related to a mood of the first user (fig. 7, col. 3, lines 32-34 shows gestures that are indicative of personality trait and/or an emotion).